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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,793	02/20/2004	Stephan Copeland	030685	7183
7590 Dennis M. Carleton BUCHANAN INGERSOLL 20th Floor One Oxford Centre Pittsburgh, PA 15219				
06/10/2008				
EXAMINER				
KING, ANITA M				
ART UNIT		PAPER NUMBER		
3632				
MAIL DATE		DELIVERY MODE		
06/10/2008		PAPER		

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1 RECORD OF ORAL HEARING
2
3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte STEPHAN COPELAND
11

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13 Appeal 2007-4223
14 Application 10/783,793
15 Technology Center 3700
16

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18 Oral Hearing Held: May 15, 2008
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22 Before JENNIFER BAHR, DAVID B. WALKER, and STEVEN
23 McCARTHY, Administrative Patent Judges
24

25
26 ON BEHALF OF THE APPELLANT:
27

28 ROB FISHER, ESQUIRE
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34 The above-entitled matter came on for hearing on Thursday, May 15, 2008,
35 commencing at 9:28 a.m., at the U.S. Patent and Trademark Office, 600
36 Dulany Street, Alexandria, Virginia, before Ashorethea Cleveland, Notary
37 Public.

PROCEEDINGS

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JUDGE PATE: Good morning, Mr. Fitzpatrick.

MR. FITZPATRICK: Good morning, Your Honor.

JUDGE PATE: We have had the chance to go over this already. So, we are up to speed on it. So, you can start your argument with that in mind.

MR. FITZPATRICK: Thank you, Your Honor. Since you're familiar with the nature of the invention, I will get right into the Examiner's rejections.

This final action has both novelty rejections and obviousness rejections; and while anticipation is a question of fact, I don't believe there is a dispute here on the facts of the references and in particular the Gibson reference.

I believe that the Examiner and the applicant agree regarding the fact-findings as far as what the references teach.

(Phone ringing.)

JUDGE PATE: Let's pause for a minute.

(Pause off record.)

JUDGE PATE: Okay. We're sorry about that, Mr. Fitzpatrick. Go ahead.

MR. FITZPATRICK: Okay. Thank you.

Your Honor, I think the issue stems from a dispute between the applicant and Examiner over the claim construction and therefore based on ed.) JUDGE BAHR: Good morning, Mr. Fisher.

MR. FISHER: Good morning, Your Honors. I'm obviously Rob Fisher representing the appellant for this appeal.

1 The current application has 13 claims. This appeal is directed towards
2 only some of those claims. As you'll note, claims three through six and
3 claim 12 are not subject to this appeal. The examiner previously has
4 identified those claims as containing allowable subject matter; and were just
5 objected to for depending from a rejected-based claim.

6 The claims subject to this appeal are claims one and two and seven
7 through eleven and 13.

8 I'm just going to give a brief overview before I get into the
9 presentation today. That overview will essentially discuss the invention just
10 generally and then I will discuss the rejections of the claims.

11 First I will discuss the rejections of claims eight through eleven and
12 13 and then I will discuss claims one, two and seven.

13 The invention, as you probably know, is a mechanical arm. The
14 mechanical arm has a base, a first linkage pivotally attached to that base and
15 second linkage pivotally attached to the first linkage.

16 Essentially, the mechanical arm is configured to be moved about and
17 when the user positions the arm it will hold the position it has been placed
18 in.

19 Some object may be attached to the second linkage such as a monitor.

20 The mechanism that actually holds the arm linkages in place to where
21 the user has positioned the arm are springs. There's a spring in each linkage
22 that is attached between an anchor point and a pivot, and a respective pivot.

23 Claims eight through eleven and claim 13 were rejected; and you'll
24 note those claims all depend from claim four which the examiner has already
25 found to contain allowable subject matter. All of those claims depend

1 directly or indirectly from claim four which also depends from claim three.
2 So, that was really an oversight on the examiner's portion.

3 It's well understood in the art or in the law at least that a claim that has
4 allowable subject matter is also allowable. Those claims should have been
5 objected to for containing allowable subject matter and also being rejected
6 and just being rejected because they depend from a rejected- base claim
7 which would be claim one.

8 JUDGE BAHR: So that's the point you were trying to make in the
9 brief when you were arguing that --

10 MR. FISHER: Yes, ma'am, on pages eight through nine of the brief
11 where we talked about the cables. The examiner's reply indicated that the
12 cables weren't at issue because those were an allowed claim on his reply.
13 Well, of course they are because they're for limitations that are within those
14 claims, and that's the point.

15 I'll now turn to claim one; and I actually have a copy of the reference,
16 Strater which is the "Q" reference here. I have actually colored in portions
17 of that art. If I can present you each with a copy of that, it might make the
18 discussion a little bit easier.

19 (Document handed to Judges.)

20 MR. FISHER: I essentially just colored in figures one and four for
21 purposes of this discussion.

22 For figures one and four, you will note that the bolt which is
23 referenced on 14 -- I only colored in the very head of the bolt which is also a
24 solid object. I didn't want to color in the full amount just to show that -- so
25 that cross-stitching was clear and that is clearly a solid bolt. There's no
26 hollow portion there.

1 So, referring to claim one and the rejection of claim one, the rejection
2 is an anticipation rejection which means each and every element has to be
3 within the claim.

4 Claim one requires as is pretty clear a base, a first linkage pivotally
5 attached to the base of the first pivot; a second linkage pivotally attached to
6 the first linkage and a second pivot; a first groove that is attached between
7 an anchor point defined in the first linkage and a first pivot and second
8 spring attached between a second anchor point defined in the second
9 linkage, and the second pivot.

10 The examiner has argued that all of that is shown in Strater. He
11 argues that this spring is indirectly attached to a pivot based on the lever
12 which is colored red there. That lever, 23, is attached to a pivot, 24, which is
13 attached to the spring.

14 The spring as you move the arm of Strater will cause the red lever to
15 move which will rotate a spreadable number 21 which is colored yellow in
16 figures one and four. That number as you'll see is an oval. That oval rotates
17 as the lever rotates and engages an arch-shaped shoe break and that
18 arch-shaped shoe break engages the bolt 14 to break the bolt so that those
19 arms when they're moved then hold the position to where they're moved.

20 An attachment is sort of like my hand is attached to my arm. The way
21 the examiner is interpreting "attached" is the equivalent of saying my hand is
22 attached to my foot. It's indirectly attached because it's attached to my arm,
23 my torso and my leg, to my foot. That's not the plain meaning of the term
24 "attached."

25 "Attached" means it's fastened or joined; and that's really
26 impermissible, and even following the examiner's interpretation of

1 "attached," at most you would say that the spring is attached to a break. In
2 the present invention, the break isn't necessary. It's eliminated by the
3 invented configuration of a spring attaching to the pivot, and as I'm sure
4 everyone here knows is an indicia of non-obviousness to eliminate elements
5 and preserve their function.

6 So, it's pretty clear that claim one is not anticipated by Strater.
7 Moving on to claim two now, claim two depends from claim one. In
8 addition to the limitations of claim one and for the reasons I've already
9 discussed, claim two is obviously allowable.

10 In addition to that, claim two adds additional limitations to the
11 structure of the pivot. Each pivot of claim two has an axle and it also has a
12 ring around the axle.

13 The examiner is arguing that the blue arch-shaped break is a ring.
14 As Strater discusses, that arch-shaped break is not a ring. It's actually
15 an arch-shaped break and it has to have that gap for the disposable member
16 which is yellow to engage the shoe break to cause the break to hold the pivot
17 so that the arms don't move.

18 It's impermissible to read a ring to be an arch-shaped member. A ring
19 is a full circle. It's just like my wedding ring. This is a ring. That structure
20 shown in Strater is not a ring.

21 The Federal Circuit has recently issued a ruling, In re: Buzzard, if I'm
22 pronouncing the name properly. There in that case, the Federal Circuit held
23 that it was impermissible to hold that a rigid. A rigid foam was read on a
24 flexible foam. There the examiner had argued that a rigid foam that was
25 crushed to be flexible was anticipated by a flexible foam. And the Federal
26 Circuit said: No, that's not true. You have to award that flexible foam is not

1 a rigid foam to make that interpretation -- that's impermissible. That's
2 ignoring the meaning of flexible foam.

3 Similarly here, we're ignoring the term "ring" or the examiner is
4 ignoring the term "ring" and saying any arch-shape could be a ring. Well,
5 arch isn't a ring, and it can't be a basis for an anticipation rejection.

6 Finally, for claim seven, the examiner has argued that the bolt, 14, is a
7 hollow axle, claim seven, and depends from claim two and adds that
8 limitation that it be hollow axle.

9 That bolt is solid all the way through. The typical meaning and the
10 understanding of a bolt is a solid rod of metal that has a head and often will
11 have threads. A hollow axle certainly is not a bolt. So, again, claim seven
12 would not be anticipated by Strater, as well.

13 Just to conclude my presentation -- and I'm more than happy to
14 answer any other questions you may have -- again, claims eight through ten
15 and 13 are allowable because they contain limitations that aren't included in
16 the Strater reference, as the examiner has already admitted.

17 Claim one is allowable because Strater does not disclose a spring
18 attached to a pivot; and claims two and seven are also allowable again
19 because Strater does not disclose a ring. It discloses an arch-shaped break;
20 and he does not disclose a hollow axle. He discloses a bolt.

21 Thank you.

22 JUDGE BAHR: A couple of questions.

23 MR. FISHER: Sure.

24 JUDGE BAHR: Does Strater disclose a spring attached between an
25 anchor point on said first linkage? Does it meet that part of the limitation?

1 MR. FISHER: The anchor defined in the linkage? I don't really
2 believe that's the case either. There they show structure like a pin that is
3 attached to that. The finding would typically be like a hole or some sort of
4 protrusion that's molded out, as I would read that.

5 But even if it does, it's certainly not attached to those two components
6 and by saying "attached between," which I think is what you're truly trying
7 to get to, both the examiner and the applicant have understood "attached
8 between" to be attached to the pivot and to the anchor. That's the
9 understanding of "attach between." That's why the term "attached" is in
10 there.

11 To say "attached between" would actually make the claim ambiguous
12 otherwise, if you didn't read it that because "attached between" -- I mean,
13 what does that mean?

14 So, the term "attached between" there is actually requiring that
15 attachment to both the anchor and the pivot.

16 JUDGE BAHR: Okay. Thank you.

17 The other question: You said the bolt in Strater is not hollow. I'm
18 looking at figure two and I'm wondering if I'm misinterpreting figure two. I
19 think that the bolt is labeled "14."

20 MR. FISHER: Figure two? Could you say that again? I'm sorry.

21 JUDGE BAHR: I believe that the bolt is labeled number 14 and that
22 appears to me to be a hollow structure. I know they call it a bolt and I
23 normally wouldn't think of a bolt as being hollow but --

24 MR. FISHER: Well, on that structure there, if you look at three and
25 four, again they don't really discuss -- Strater doesn't discuss this any further.

1 But the way that's marked with the line marking there, that is not
2 defining a hollow structure, as I understand drawing markings. I don't know
3 why else there would be -- for instance, there's a dot in the very center and
4 then you see some additional lines there.

5 JUDGE BAHR: Figures three and four make it look like there's
6 something in there. But I think the bolt is actually identified as that structure
7 outside of the structure you're pointing to. Just curious. It might not really
8 be clear from this reference.

9 MR. FISHER: I don't believe that's accurate.

10 JUDGE BAHR: It could be some of these lead lines aren't drawn
11 accurately.

12 MR. FISHER: Yeah; that could be, too.

13 JUDGE BAHR: Thanks. I don't have any further questions. Any
14 questions?

15 (No response.)

16 JUDGE BAHR: Thank you.

17 MR. FISHER: Thank you.

18 (Whereupon, at approximately 9:42 a.m., the proceedings were
19 concluded.)